and constructive exceptions. Some states confer special rights of inheritance from and upon certain collateral relatives by adoption.[9] Some retain all natural rights of the child along with his newly acquired ones.[10] The child is always given the right to inherit from his adoptive parent,[11] but the latter does not in every state acquire a corresponding right to his property, nor the natural parent lose it.[12] Others give the adoptive parent only such of the child's property as the latter may have received from the prior death of the other adoptive parent.[13] The Texas statute confers rights of inheritance alone, and does not, as all others do, transfer the custody and control of the child and the duty of maintenance.[14]

A third theory which might be held is that the statute establishes a life relationship only, terminating by the death of either party. Adopter and adopted would have reciprocal rights of inheritance, as those are fixed at the moment before death, but the natural relations would be merely suspended, not destroyed, by the artificial status created, and would revive upon dissolution of that status. This theory has not received the sanction of any court, apparently, though presented in one strong dissenting opinion,[15] and though in harmony with practice of the Mississippi law, which transfers only personal rights, without affecting the inheritance.[16]

The prevailing theory, though leading to incongruities, is probably as equitable and logical as any theory of partial substitution can be, while natural affection rejects the complete substitution practiced by the early Romans. Mr. Justice Sloss well sums up the situation thus:[17] "It would no doubt be possible to suggest contingencies in which the views we have expressed would lead to embarrassing and difficult problems. But we think the same may be said of any other view that might be adopted."

O. C. P.

CONFLICT OF LAWS: VOLUNTARY SURRENDER OF ASSETS IN LOCAL JURISDICTION TO DOMICILIARY ADMINISTRATOR.—It is an elementary principle that the state by reason of its sovereignty has

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fornia Law Review, 259; 26 Harvard Law Review, 546.

[9] Shick v. Howe (1908), 137 Iowa, 249, 114 N. W. 916, 14 L. R. A. (N. S.) 980; Ross v. Ross (1878), 129 Mass. 243, 37 Am. Rep. 321.

[10] Wagner v. Varner (1879), 50 Iowa, 532; Patterson v. Browning (1896), 146 Ind. 160, 44 N. E. 993.

[11] In re Newman's Estate (1888), 75 Cal. 213, 16 Pac. 887, 7 Am. St. Rep. 146.

[12] Hole v. Robbins (1881), 53 Wis. 514, 10 N. W. 617; Stearns v. Allen (1903), 183 Mass. 404, 67 N. E. 349, 97 Am. St. Rep. 441.

[13] Humphries v. Davis (1884), 100 Ind. 274, 50 Am. Rep. 788.

[14] Taylor v. Deseve (1891), 81 Tex. 246, 16 S. W. 1008.

[15] Dissenting opinion of Shaw, J., in Estate of Jobson, supra, n. 8.

[16] Beaver v. Crump (1898), 76 Miss. 34, 23 So. 432. See also Upson v. Noble (1880), 35 Oh. St. 655.

[17] Estate of Jobson, supra, n. 8.

absolute jurisdiction of all persons and property situated within its borders, and accordingly has the right to administer the goods of a deceased person found therein irrespective of the domicile of the deceased at the time of his death. It is also a familiar proposition that the jurisdiction of a court of a state is limited by the territorial boundaries of that state. Inasmuch as an executor or administrator is considered an officer of the court which appoints him, it necessarily follows that his authority is limited to the jurisdiction of his state and that whatever effect may be given to his transactions in another state is purely a matter of comity. He can not of right act as an officer of the court in a foreign state; hence the familiar proposition that a domiciliary executor or administrator, in the absence of an enabling statute, cannot sue in the courts of a foreign state.

And yet, although the authority of the domiciliary administrator or executor does not extend beyond the territorial limits of the state of his appointment, should not some recognition be given, under certain circumstances, to payments voluntarily made, or to assets voluntarily surrendered to him in the local jurisdiction? It is of course conceivable that a state could refuse to recognize such payment, or such surrender of assets, as a defense to a suit subsequently brought by the ancillary administrator, and this indeed seems to be the English doctrine.[1] Comity has, however, in certain cases settled the rule otherwise in this country. Until the case of *Union Trust Company of San Francisco v. The Pacific Telephone and Telegraph Company*[2] the question had never been distinctly decided in this state, though there has been dicta pointing the way.[3] It would then be well to consider the rights of the paying debtor or of the person who surrenders assets under various possible situations with a view to determining his rights.

If, knowing that an administrator has been appointed in his local jurisdiction one voluntarily pays a debt, or surrenders assets

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[1] Dicey, Conflict of Laws, (second ed.) 461. Where an English company transferred shares of an American testator to his executor, the latter was held executor de son tort. Attorney-General v. New York Breweries Co. (1897), [1898], 1 Q. B. 205.

[2] (July 7, 1916), 23 Cal. App. Dec. 62.

[3] The Dictum in McCully v. Cooper (1896), 114 Cal. 25, 46 Pac. 82, 35 L. R. A. 492, 55 Am. St. Rep. 66, is squarely in point, but the case of Brown v. S. F. Gas Light Co. (1881), 58 Cal. 426, cited by the court as a case where a domiciliary administrator was allowed to sue in this state in the absence of local administration, was in fact a suit by an assignee of an executor who was given power by will to sell the chose in action, a holding explainable under a different theory. See Petersen v. Chemical National Bank (1865), 32 N. Y. 21, 88 Am. Dec. 298. In Cortelyou v. Imperial Land Co. (1913), 166 Cal. 14, 23, 134 Pac. 981, the court seems to assume the right of an obligor in this state to pay over voluntarily to the domiciliary administrator assets which he held in this state, in the absence of ancillary administration.

to a domiciliary administrator, he ought not to be protected,[4] for as between a domiciliary executor or administrator, and an ancillary administrator it has been held [5] that the latter is entitled to the assets. Such knowledge should be actual and not constructive. The burden of searching the record to see whether a petition for administration has been filed should not be thrown upon him.[6] Payment or surrender of assets to a domiciliary administrator prior to, or without knowledge of the appointment of an ancillary administrator should be held to be a good discharge, and such we find to be the trend of the American decisions.[7]

The purpose of ancillary administration is, of course, the protection of the interests of the creditors of the deceased. The question then arises whether the non-existence of creditors in the state of ancillary administration is a necessary requisite for the application of the above rule, a question still open in this state. In Wilkins v. Ellett [8] which settled the rule in the federal courts it expressly appeared that there were no domestic creditors. In many cases which support the proposition stated above, there is no reference to creditors and in at least one the existence of local creditors was held immaterial.[9] The test should be not the existence of creditors, but actual knowledge of such existence,—and perhaps even here the defense might be considered good if the estate is otherwise solvent. But in all cases if the payment or surrender is made in good faith, before or without knowledge of an ancillary administration, and without knowledge of the existence of creditors, it should constitute a good defense to an action subsequently brought by an ancillary administrator.

M. W.

CONTRACTS: EMPLOYMENT: CONDITION IN CONTRACT THAT EMPLOYER MAY FIX COMPENSATION TO BE PAID FOR SERVICES.—The cast of *Foster v. Young* [1] presents a rather unique type of employment contract in that it contains a condition allowing the employer to fix the compensation to be paid for the services rendered.

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[4] Walker v. Welker (1893), 55 Ill. App. 118; Stone v. Scripture (1870), 4 Lans. 186.

[5] Murphy v. Crouse (1901), 135 Cal. 14, 66 Pac. 961, 87 Am. St. Rep. 90; McCully v. Cooper (1896), 114 Cal. 258, 46 Pac. 82, 35 L. R. A. 492, 55 Am. St. Rep. 66.

[6] In Maas v. German Savings Bank (1903), 176 N. Y. 377, 68 N. E. 658, 98 Am. St. Rep. 689, payment made to the domiciliary administrator after the making and recording of an ancillary appointment of which debtor had no knowledge was held to constitute a defense.

[7] Wilkins v. Ellett (1883), 108 U. S. 256, 27 L. Ed. 778, 2 Sup. Ct. Rep. 641; Schluter v. Savings Bank (1889), 117 N. Y. 125; 22 N. E. 572, 5 L. R. A. 541; In Re Washburn's Estate (1891), 45 Minn. 242, 47 N. W. 790; 2 Wharton, Conflict of Laws, (3d ed.) 1380.

[8] Supra, n. 7.

[9] Citizens' Nat. Bank v. Sharp (1879), 53 Md. 521.

[1] (Mar. 14, 1916) 51 Cal. Dec. 369.